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7 [Proposed] Lead Counsel for Plaintiffs

8 UNITED STATES DISTRICT COURT
9
10 NORTHERN DISTRICT OF CALIFORNIA

11 ALLAN J. NICOLOW, Individually and on
Behalf of All Others Similarly Situated,

12 Plaintiff,

13 vs.

14 HEWLETT-PACKARD COMPANY, et al.,

15 Defendants.

) No. 3:12-cv-05980-CRB

) CLASS ACTION

) REPLY IN SUPPORT OF MOTION FOR
) APPOINTMENT AS LEAD PLAINTIFF
) AND APPROVAL OF LEAD PLAINTIFF'S
) SELECTION OF LEAD COUNSEL

16 DATE: March 1, 2013
TIME: 10:00 a.m.
CTRM: 6, 17th Floor

1 Central States, Southeast and Southwest Areas Pension Fund (“Central States”) and the
2 Strathclyde Pension Fund (“Strathclyde”) (collectively the “Pension Funds”) respectfully submit this
3 reply in support of their motion for appointment as lead plaintiff.

4 The Pension Funds acknowledge that in considering the appointment of a lead plaintiff under
5 the Private Securities Litigation Reform Act of 1995, courts have used a number of different criteria
6 to determine which movant has “the largest financial interest in the relief sought by the class.” 15
7 U.S.C. §78u-4(a)(3)(B)(iii). Among those various criteria, courts in this District have considered
8 the first-in, first-out accounting method (or “FIFO”), the last-in, first-out accounting method (or
9 “LIFO”), and/or a four-factor inquiry that variously considers losses, net shares purchased, total
10 shares purchased, and net funds expended. *See generally In re McKesson HBOC, Inc. Sec. Litig.*, 97
11 F. Supp. 2d 993 (N.D. Cal. 1999) (Whyte, J.). Some of these criteria would favor the appointment of
12 other competing movants. *See, e.g.*, Dkt. No. 71 at 1-2. However, in determining which movant
13 was “left ‘holding the bag’ when the fraudulent information [was] revealed,” at least one court has
14 determined that the net funds expended by a movant is a significant metric in the determination of
15 which movant has the largest financial interest in the litigation. *McKesson*, 97 F. Supp. 2d at 997.
16 Under that metric, the \$47.5 million expended by the Pension Funds is substantially higher than the
17 net funds expended by either the PGGM Group (\$17.4 million) or the Virginia Retirement System
18 (\$37.2 million). Indeed, no movant has challenged the fact that the Pension Funds have the highest
19 net funds expended during the longer alleged class period (2008-2012). *See generally* Dkt. Nos. 74
20 and 75. Similarly, during the shorter alleged class period (2011-2012), the Pension Funds made no
21 stock sales, making them the only movant that did not profit from defendants’ fraud during that
22 shorter alleged class period.

23 Finally, as set forth in its Motion for Appointment as Lead Plaintiff and Approval of Lead
24 Plaintiff’s Selection of Lead Counsel (Dkt. No. 49) and its Memorandum of Law in Opposition to
25 Competing Motions for Appointment as Lead Plaintiff (Dkt. No. 71), the Pension Funds satisfy the
26 typicality and adequacy requirements established by Rule 23 of the Federal Rules of Civil Procedure.
27 Here again, no other movant has challenged the typicality and adequacy of the Pension Funds, nor
28 has any other movant challenged the qualifications of the Pension Funds’ choice of lead counsel.

The Pension Funds stand ready to serve the interests of the class and remain prepared to vigorously litigate this action on behalf of the class should the Court choose to appoint them lead plaintiff. The Pension Funds' adequacy and typicality being unchallenged, the Court has ample basis to appoint the Pension Funds as lead plaintiff should it determine that they have the largest financial interest in the litigation.

DATED: February 15, 2013

Respectfully submitted,

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on February 15, 2013, I authorized the electronic filing of the foregoing
3 with the Clerk of the Court using the CM/ECF system which will send notification of such filing to
4 the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I
5 caused to be mailed the foregoing document or paper via the United States Postal Service to the non-
6 CM/ECF participants indicated on the attached Manual Notice List.

7 I certify under penalty of perjury under the laws of the United States of America that the
8 foregoing is true and correct. Executed on February 15, 2013.

9 s/ Danielle S. Myers
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Manual Notice List

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